COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Bhatti v. Yellow Cab Company Ltd.,* 2025 BCCA 414

Date: 20251126
Docket: CA50291

Between:

Amarjit Singh Bhatti and Kuldeep Singh Bhatti

Appellants
(Petitioners)

And

Yellow Cab Company Ltd., Kulwant Sahota, Kulwinder Saini, Satnam Jaswal, Nirmaljit Sidhu, Rajesh Thakur, and Charanjit Dass

Respondents
(Respondents)

Before: The Honourable Mr. Justice Butler
The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Warren

On appeal from: An order of the Supreme Court of British Columbia, dated November 6, 2024 (*Bhatti v. Yellow Cab Company Ltd.*, 2024 BCSC 2031, Vancouver Docket S246819).

Counsel for the Appellants:	K.S. Atwal
Counsel for the Respondents:	R.W. Grant, K.C. Y. Wong
Place and Date of Hearing:	Vancouver, British Columbia June 27, 2025
Place and Date of Judgment:	Vancouver, British Columbia November 26, 2025

Written Reasons by:
The Honourable Mr. Justice Butler

Concurred in by:
The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Warren

Summary:

The appellants appeal the dismissal of their petition claiming the respondents permitted the transfer of shares in violation of the company's articles. They argue the chambers judge erred by admitting affidavit evidence of a company manager, and in refusing to draw adverse inferences against the personal respondents for not providing affidavit evidence. They further argue the chambers judge erred in interpreting Article 4.1(d) for transfers to existing shareholders, and in failing to find that the personal respondents breached their fiduciary duties.

Held: The appeal is dismissed. The judge did not err in admitting Ms. Bauer's affidavit evidence and refusing to draw adverse inference against the personal respondents. The judge's finding of no breach of fiduciary duty of the respondents stands as there was no evidence of self-dealing. The judge did not err in her interpretation of Article 4.1(d) for share transfers to existing shareholders. The principles of contractual interpretation apply to interpretation of a company's articles. The judge did not allow the surrounding circumstances to overwhelm the text, nor did she ignore provisions in the agreement. The judge applied the proper principles and her interpretation of the provisions is entitled to deference.

Reasons for Judgment of the Honourable Mr. Justice Butler:

[1] Amarjit Singh Bhatti and Kuldeep Singh Bhatti, shareholders of Yellow Cab Company Ltd. ("Yellow Cab"), appeal the dismissal of their petition seeking a variety of relief against Yellow Cab, and the personal respondents who are directors and shareholders of Yellow Cab. In their petition, the appellants alleged that the personal respondents permitted or facilitated the transfer of shares in Yellow Cab in violation of the company's articles, and breached their duties owed as directors pursuant to s. 142(1) of the *Business Corporations Act*, S.B.C. 2002, c. 57 [*BCA*]. The petitioners sought remedies for this allegedly oppressive action. They also claimed that, in permitting the transfer of shares contrary to the articles, the personal respondents breached fiduciary duties owed as directors of Yellow Cab and sought leave to commence a derivative action.

[2] In their factum, the appellants argued the chambers judge erred in dismissing each of their claims for relief. However, at the hearing of the appeal, they significantly narrowed their grounds of appeal and the nature of relief sought. The appellants now argue that the judge erred in her interpretation of the share transfer

provisions of Yellow Cab's articles and seek only a declaration to that effect. For the reasons that follow, I would dismiss the appeal.

Reasons of the Chambers Judge

[3] The relevant background is fully described in the reasons of the chambers judge indexed at 2024 BCSC 2031 ("Chambers Reasons"). Yellow Cab is an owner-operator taxi company, meaning that its shareholders are all taxi owners. The company has 321 Class "A" voting shares, each of which is tied to a license to operate a taxi during either a day or night shift. No person is permitted to hold more than two Class "A" shares. Because of the co-operative nature of the business, the company's articles (the "Articles") prescribe the rights of shareholders to transfer those shares and provide for certain rights of first refusal to the company and second refusal to existing shareholders.

[4] Article 4.1 provides:

> 4.1 The transfer of shares of the Company is restricted as follows:
>
> (a) The Directors may decline to register any transfer of shares to person of whom they do not approve; and,
>
> (b) No person shall be entitled to own shares of the Company unless such person owns at least one-half interest in a taxicab operated by or in agreement with the Company; and,
>
> (c) The owner of such a taxicab shall be entitled to one Common Class "A" share and fifteen (15) Common Class "B" shares for each one—half interest in such a taxicab with a maximum of two (2) Common Class "A" shares to be owned by any one person; and,
>
> (d) Subject to any rights to transfer shares pursuant to a member's operating agreement with the Company, any member wishing to sell his shares shall grant a right of first refusal to the Company to match any acceptable offer for the shares, said right to be exercised within ten (10) days of receipt by the Company of notice from the selling member; if the Company declines to exercise its right, the other members of the Company shall have a right of second refusal to match offer, to be exercised within ten (10) days after expiry of the right of first refusal. If more than one member exercises this right of second refusal, the seller may select the member to whom he wishes to sell. If neither the Company nor any member exercises the right of refusal herein, the selling member shall be free to sell the shares on the same terms and conditions to any other person subject to the requirement for approval for such person by the Directors aforesaid; …
>
> [Emphasis added.]

[5] The issues on appeal concern the proper interpretation of Article 4.1(d).

[6] Shortly before the 2021 annual general meeting, the petitioners realized that new shareholders had replaced some of the existing shareholders of Yellow Cab, and that existing shareholders, including the personal respondents, had altered their shareholdings.

[7] The petitioners believed the company and existing shareholders had not been afforded the opportunity to exercise their rights of first and second refusal in accordance with the Articles. Further, they alleged that the personal respondents breached their fiduciary duties or their obligations as directors under s. 142 of the *BCA*, by facilitating the breach of the Articles for personal gain through the sale and acquisition of Class “A” shares.

[8] The petitioners initially advanced their claims by way of a civil action but discontinued the action and issued a petition seeking the described relief. The respondents filed affidavits of Carolyn Bauer, the general manager of the company, as part of their response to the allegations that the company had permitted the transfer of shares in breach of the Articles. She described the procedure followed by the company for share transfers. The petitioners challenged the admissibility of her affidavits and asked the judge to draw an adverse inference against the personal respondents who did not provide affidavit evidence.

[9] The judge first examined the petitioners’ preliminary objection to the admissibility of Ms. Bauer’s evidence and their assertion that she should draw an adverse inference.

[10] The judge found that Ms. Bauer had direct knowledge of the company’s practices for share transfers and admitted her evidence, except for those portions of her affidavits that purported to offer her opinion on whether the practices were in accordance with the Articles. The judge noted that corporations speak through their representatives, and that Ms. Bauer had been employed as the general manager since 2010. In that capacity, she had handled the day-to-day operations of the

company including dealings with share transfers. I will refer to the judge's findings regarding the company's practices for dealing with share transfers below.

[11] The judge declined to draw an adverse inference against the personal respondents. Given her acceptance of Ms. Bauer's evidence, there was nothing that compelled the personal respondents to give evidence: Chambers Reasons at paras. 36–37.

[12] The judge set out the issues raised by the petition:

> a) Whether the petitioners have established a breach of the Articles.
>
> b) Whether the petitioners have established that the Personal Respondents breached their statutory duties as directors under s. 142(1) of the *BCA*, or their fiduciary duties owed to the Company.
>
> c) Whether actions taken by the Personal Respondents amounted to oppressive action against the petitioners under s. 227(2)(a) of the *BCA*?
>
> d) Whether the petitioners have met the requirements of s. 232 of the *Act* for leave to bring a derivative action?

Chambers Reasons at para. 25.

[13] The petitioners argued that the way the respondents had affected share transfers to both new and existing shareholders breached the provisions of Article 4.1(d). The judge considered their arguments concerning share transfers to new and existing shareholders separately.

[14] Regarding new shareholder transfers, the evidence shows respondents Mr. Saini and Mr. Sahota each transferred a share to a new shareholder. The agreements were made on August 24, 2020, and August 28, 2020, respectively. The minutes of the directors' meeting showed both transactions were approved on September 1, 2020. However, the petitioner, Kuldeep Singh Bhatti, deposed that existing shareholders were not notified of these transfers "on the Company's noticeboard or through any other medium": Chambers Reasons at para. 42. Fifteen substantially identical affidavits were also provided by other shareholders deposing that there was no notice.

[15] The judge rejected the appellants' evidence that shareholders were not informed of the proposed new shareholder transfers and were not given an opportunity to exercise the right of second refusal. She accepted Ms. Bauer's evidence that the board received notice of the proposed share transfers and approved them as reflected in the minutes of the directors' meeting. The judge also accepted Ms. Bauer's evidence that notices of the proposed share transfers were posted on the company notice board for at least 10 days.

[16] Some of the impugned transfers of shares also occurred between existing shareholders. These shareholder-shareholder transfers included involvement of Mr. Saini and Mr. Sahota, who each purchased shares from existing shareholders in August 2020. The company did not exercise its right of first refusal for these transfers and did not give notice of these transfers to other shareholders.

[17] With regard to the share transfers to existing shareholders, the judge noted that the board had approved the proposed share transfers, thus indicating it was not going to exercise its right of first refusal. The judge observed that it was inconsequential that the board did so before 10 days had passed. She accepted that the "plain meaning" of the text of Article 4.1(d) supported the respondents' position: "[w]hen a shareholder-to-shareholder sale takes place, there is no need to put the transaction on hold for others to exercise their right of second refusal": Chambers Reasons at para. 49. She found there was no need for the company to give notice to other shareholders of their right of second refusal because they are "by no means guaranteed a right to acquire the shares" as that right "may be frustrated by forces outside of their control, including the choice of the selling shareholder": Chambers Reasons at para. 48.

[18] Finding the appellants had not established a breach of the Articles, the judge rejected their contention that the personal respondents had breached their duties to the company either as fiduciaries or as directors in accordance with s. 142(1) of the *BCA*. She also noted that the appellants could not pursue an action for breach of fiduciary duty by way of petition. The judge rejected the contention, advanced in oral

argument, that the personal respondent Mr. Sahota had failed in his duty to act honestly and in good faith because he sold his pre-existing share for more than he paid for his new share. The judge noted there was no evidence before the court to explain why any share was priced in a particular way and that there were many possible explanations for share price differences that did not involve sharp dealing.

[19] Finally, the judge dismissed the appellants' claim for an oppression remedy against the personal respondents and refused to grant the appellants leave to bring a derivative action in the company's name against the personal respondents. The concessions made by the appellants at the appeal hearing means there is no need to address these findings further.

On Appeal

[20] In their factum, the appellants alleged the judge erred in:

a) admitting Ms. Bauer's affidavit evidence;

b) refusing to draw an adverse inference against the personal respondents;

c) interpreting Article 4.1(d) for share transfers to existing shareholders;

d) finding no oppression despite clear prejudice;

e) denying leave for a derivative action; and

f) failing to consider the alleged fiduciary duty breach independently.

[21] At the hearing of the appeal, the appellants abandoned reliance on errors d) and e) concerning their oppression claim and proposed derivative action. Counsel's submissions focused on alleged error c), challenging the judge's interpretation of Article 4.1(d) in relation to share transfers to existing shareholders. Although the appellants did not abandon reliance on alleged errors a) and b), counsel did not advance oral submissions on those grounds. The appellants' counsel also did not press the alleged error concerning the asserted breach of fiduciary duty in oral argument. He did however maintain that the process taken for the transfer of shares

to existing shareholders was an “abuse of process” that enabled the personal respondents to buy and sell shares at a profit to the detriment of other shareholders.

[22] I will briefly deal with grounds of appeal a), b) and f) but will focus on the issue c) raised concerning the interpretation of Article 4.1(d) as that is the only substantive question raised by this appeal. Before turning to my analysis of these issues, it is helpful to examine how Article 4.1 operates to facilitate share transfers for the benefit of Yellow Cab and its shareholders who are carrying on a cooperative taxi business. In the process I will comment on some of the appellants’ submissions which suggest a misunderstanding of the share transfer provisions.

Context for Article 4.1 and the rights of refusal

[23] The appellants argue that the right of second refusal provision in Article 4.1(d) is intended to maintain share value by enabling a selling shareholder to obtain the highest price for their share. They argue the provision does this by requiring the company to give notice of a proposed share transfer to all existing shareholders who then have the opportunity to offer a higher price for the share while exercising their right of second refusal. The appellants essentially submit that the provisions are intended to facilitate the marketing of each share including by enabling a bidding war between existing shareholders.

[24] In my view, the appellants’ argument reflects a misunderstanding of how the provisions operate, and a misunderstanding of the right of second refusal that is afforded to existing shareholders.

[25] First, I accept the respondents’ submission that the primary purpose of Article 4.1 is to ensure preference is given to the company and its existing shareholders when a share transfer is proposed. This is accomplished by giving the company the right to approve a proposed share transfer and, if it does not approve the purchaser, the ability to exercise its right of first refusal by which it could acquire the share on the same terms presented to it for approval. As the shareholders operate the company as a cooperative, such provisions allow the company to limit

new shareholders to individuals who the board believes will be able to work cooperatively with existing shareholders.

[26] Second, I also accept the respondents' submission that Article 4.1 is not concerned with the marketing of shares by an existing shareholder. Each shareholder is free to advertise or market a proposed share sale in any way they wish. A shareholder could post a notice on the company notice board soliciting offers for the share, approach one or more shareholders with a proposal, or undertake any other form of marketing the shareholder devises. However, the provisions of Article 4.1 do not come into play unless and until the selling member has found a purchaser for their share and has entered into an agreement for the purchase and sale of that share.

[27] It is important that the right given to the company is a right of first refusal, while existing shareholders are given a right of second refusal. Both provide the right to match an agreement—presumably including price, parties, timing and other terms—that has been reached for the transfer of a share. The right of second refusal does not arise until the share purchase has been approved by the company which has declined to exercise its right of first refusal. In the case of a share sale to a new shareholder, the ability of the purchaser to complete the transaction is, because of the provisions of the Articles, dependent upon whether an existing shareholder has taken steps to exercise their right of second refusal.

[28] The appellants' argument submits that the ability of a purchaser—who is an existing shareholder—to complete an agreement to purchase a share from an existing shareholder is also dependent upon whether another existing shareholder has taken steps to exercise their right of second refusal. As discussed below, I would not accept that argument. But I would also note that this issue does not arise directly on this appeal. There is no contest between an existing shareholder who has entered into an agreement to acquire a share and another existing shareholder who wishes to exercise a right of second refusal. However, the interpretation point raised by the argument may be important for the company and shareholders in future

circumstances where a shareholder has chosen to sell a share to an existing member in accordance with Article 4.1(d).

Analysis

Did the judge err in admitting Ms. Bauer's affidavit evidence?

[29] As I have indicated, in oral submissions, the appellants did not press this argument. There is no merit to the position they took in the court below and repeated in their factum. The appellants cannot direct us to any authority in support of their position. The chambers judge referred to the well-established principle that corporations speak through their representatives (Chambers Reasons at para. 28) and was careful not to admit portions of the affidavit that expressed legal opinion. She found that Ms. Bauer, the long-time general manager of Yellow Cab, had personal knowledge of the matters she attested to and stated:

> [34] Ms. Bauer's job duties over the years clearly placed her in a position to have corporate knowledge about the shares of the Company, transfers of those shares, the general practices of the Company, consultation processes with the taxi industry, and changes in the industry and insurance. I accept that Ms. Bauer is the appropriate corporate representative to give the evidence that has been offered.

[30] I would not give effect to this alleged error.

Did the judge err in failing to draw an adverse inference?

[31] The appellants equally did not press the adverse inference argument in oral submissions. It is without merit. The judge made the necessary findings of fact regarding share transfers, having admitted and accepted the evidence of Ms. Bauer both regarding the specific share transfers in issue and more generally. There was no need for the personal respondents to give evidence. The judge exercised her discretion not to draw an adverse inference against the personal respondents, and in doing so considered the evidence before her and the relevant circumstances. There is no basis to challenge her discretionary decision which is entitled to deference.

Did the judge err in failing to find a breach of fiduciary duty?

[32] The appellants' argument on this alleged error is not well developed in their factum and counsel's oral submissions did little to support the allegation of wrongdoing. The appellants suggest that the judge erred by "tying the fiduciary duty analysis solely in compliance with Article 4.1(d), neglecting broader duties under … the *BCA* to act honestly and in the Company's best interests." The argument is based on the assertion that the personal respondents transferred or acquired shares at a price that afforded them a personal benefit. In support of this argument, the appellants submit that the judge erred in speculating that the price paid for shares is tied to vehicle values instead of the value of the company's assets and its real property: Chambers Reasons at para. 57.

[33] In my view, there is no merit to this alleged error. First, the judge expressly rejected the allegation that the respondents failed to act honestly or in good faith in connection to the pricing of transferred shares. This was raised for the first time in oral argument. The judge found there was no evidence before the court that would allow it to draw any conclusion as to why shares were priced in a particular way. She correctly observed that shares were "tied to the vehicles" and that there could be many possible explanations for price differences: Chambers Reasons at para. 57.

[34] Ms. Bauer's evidence supported these findings:

> 19. There are many different factors that can affect the price of shares and taxicabs. These factors include the age, condition and mileage of the vehicle, the identity of the other operator, whether the vehicle is included in the sale or it is a share transfer only, whether the car has airport plates, and its shift change time.
>
> …
>
> 21. Since March 2020, there have been share transfers ranging from as low as approximately $57,000 to his high as approximately $150,000.

[35] The absence of evidence suggesting anything nefarious about the share prices meant there was no basis on which the court could conclude that the personal respondents engaged in self-dealing or a conflict of interest.

[36] I would reject this ground of appeal.

Did the judge err in interpreting Article 4.1(d) for share transfers to existing shareholders?

Interpretation in Chambers Reasons and positions of the parties

[37] Having accepted Ms. Bauer's evidence, the judge described the company's general practice for dealing with share transfers:

> a) When a share transfer is made to a new shareholder, the process is as follows:
>
> i) When the selling shareholder has found a purchaser for the share, the seller and purchaser attend at the Senior Operations Manager's office ("Mr. Bali");
>
> ii) Mr. Bali prepares certain transfer documents, including the Amended and Restated Purchase and Sale Agreement (the "Agreement");
>
> iii) The Agreement is dated, the purchase price is written on the Agreement, and the Agreement is signed. The Agreement is created at this stage to ensure fairness—so that if the Company or an existing shareholder wishes to match the offer, the prior offer is documented and there is evidence of the offer made by the non-shareholder. Then the Agreement is put before the Board of Directors for approval. Once the Board approves, it is put on hold for at least ten days;
>
> iv) Mr. Bali, or the Company's receptionist (Ms. Remo in 2020), will then post notice of the proposed sale on the Company's noticeboard for at least ten days; and
>
> v) If no shareholder has exercised their right of second refusal within ten days, then the seller may sell their share to a non-shareholder.
>
> b) When a share transfer is made to an existing shareholder, the process is the same except that if the Company declines to exercise its right of first refusal, the transaction is not put on hold for ten days and notice of the transaction is not posted on the Company noticeboard.
>
> [Emphasis added.]

Chambers Reasons at para. 30.

[38] Below, the appellants argued that the company's practice for transfers to existing shareholders was in breach of Article 4.1(d). They asserted that a transfer requires notice of the proposed share transfer to be given to existing shareholders whether the sale is to a new or existing shareholder, so that they could have the

opportunity to exercise the right of second refusal. The respondents argued there was no requirement for notice when the selling shareholder had agreed to transfer the share to an existing shareholder.

[39] The judge found that the plain meaning of the text of Article 4.1(d) supported the respondents' interpretation. She noted that the company approved the transfer for each of the share sales in question. The judge found that the Articles did not require notice to be given to other shareholders as the company did not exercise its right of first refusal. She reasoned:

> [48] Article 4.1(d) stipulates that if the Company declines to exercise its right, the other members of the Company shall have a right of second refusal to match the offer. However, it also provides that if more than one member exercises this right of second refusal, the seller may select the member to whom he wishes to sell. Thus, shareholders who have a right of second refusal are by no means guaranteed a right to acquire the shares. The crystallization of their right may be frustrated by forces outside of their control, including the choice of the selling shareholder: *Pandher v. Yellow Cab Co. Ltd.*, 2011 BCSC 460 at para. 34.
>
> [49] When a shareholder-to-shareholder sale takes place, there is no need to put the transaction on hold for others to exercise their right of second refusal. The only party who could be prejudiced by the decision not to do so is the seller who foregoes the chance to have a bidding war. No such seller has challenged the process in this proceeding and the logical inference is that the challenged transactions simply reflect the seller's right, which is set out in Article 4.1(d), to choose which existing shareholder to sell to.

[40] The appellants submit the judge "made a palpable and overriding error of fact and an error of law" in misinterpreting Article 4.1(d) by concluding the company is not required to give notice of a proposed transfer to existing shareholders. They note that the right of second refusal established in Article 4.1(d) does not differentiate between sales to new and existing shareholders; it mandates a uniform process. Accordingly, there is no basis upon which the judge could conclude the company is not required to give notice of proposed sales to existing shareholders. Similarly, they submit the judge erred in finding there was "no need to put the transaction on hold" when the provision clearly states that the right of second refusal to match the offer can "be exercised within ten (10) days after expiry of the right of first refusal".

[41] The respondents submit the standard of review is deferential as the interpretation of Article 4.1(d) raises a question of mixed fact and law. They argue the judge properly considered the entire text of Article 4.1 and interpreted the provision in light of its purpose and with regard to the provision establishing a selling shareholder's right to select the shareholder to whom they wish to sell. They argue the judge's interpretation was reasonable and consistent with good business sense.

Analysis of the judge's interpretation

[42] A company and its shareholders are bound by the company's articles: s. 19, *BCA*. Accordingly, the articles of a company "constitute a contract between the company and the shareholders which every shareholder is entitled to insist upon being carried out": *Minister of National Revenue v. Dworkin Furs (Pembroke) Ltd.*, [1967] S.C.R. 223 at 233, 1967 CanLII 112 (SCC), citing *Theatre Amusement Co. v. Stone*, [1914] 50 S.C.R. 32 at 37, 1914 CanLII 40 (SCC).

[43] The principles of contractual interpretation apply to the interpretation of a company's articles given that the articles constitute a contract between shareholders and the company. Contractual interpretation engages issues of mixed fact and law as "an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix": *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at paras. 53–55; *Corner Brook (City) v. Bailey*, 2021 SCC 29 at para. 44. Deference is owed to the judge's construction of the contract—in this case the Articles—which is evaluated on the palpable and overriding error standard of review: *Corner Brook (City)* at para. 4.

[44] The principles of contractual interpretation are well understood. A judge's task is to ascertain the intention of the parties in a practical and common sense manner, not dominated by technical rules of interpretation. The contract is to be read as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties: *Sattva* at para. 47.

[45] It may be possible to identify "extricable" errors of law made in the process of contractual interpretation, but these circumstances are rare. Possible legal errors include "the application of an incorrect principle, the failure to consider a required element of a legal test, or the failure to consider a relevant factor": *Sattva* at paras. 53–54.

[46] While the appellants did not develop the argument that the judge committed an extricable error of law, I understand their submissions to raise two questions. First, did the judge allow the factual matrix to overwhelm the words of the Articles? This amounts to an extricable error as to do so would effectively create a new agreement: *Sattva* at para. 57. To find such an error, "a reviewing court must be satisfied that the decision-maker interpreted the factual matrix isolated from the words of the contract; an approach which could effectively create a new agreement": *Teal Cedar Products Ltd. v. British Columbia*, 2017 SCC 32 at para. 65.

[47] The second potential extricable error of law is that the judge ignored relevant provisions of the Articles, thus failing to read them as a whole: *Sattva* at para. 64.

[48] In my view, the judge did not commit either of these legal errors.

[49] For ease of reference, I will restate Article 4.1(d):

> (d) Subject to any rights to transfer shares pursuant to a member's operating agreement with the Company, any member wishing to sell his shares shall grant a right of first refusal to the Company to match any acceptable offer for the shares, said right to be exercised within ten (10) days of receipt by the Company of notice from the selling member; if the Company declines to exercise its right, the other members of the Company shall have a right of second refusal to match offer, to be exercised within ten (10) days after expiry of the right of first refusal. If more than one member exercises this right of second refusal, the seller may select the member to whom he wishes to sell. If neither the Company nor any member exercises the right of refusal herein, the selling member shall be free to sell the shares on the same terms and conditions to any other person subject to the requirement for approval for such person by the Directors aforesaid;

[50] The challenge in interpreting Article 4.1(d) arises from the lack of precision in its drafting. As the appellants argue, the provision is intended to apply to all share sales by existing shareholders. However, contrary to the appellants' assertion, the article does not require notice to be given by the company to other shareholders if the company declines to exercise its right of first refusal. The only "notice" mandated is that the selling shareholder must give notice of the proposed share sale to the company.

[51] The judge considered the "plain meaning" of Article 4.1(d) which specifically grants to the selling shareholder the right to "select the member to whom he wishes to sell". The implications of that provision differ depending on whether the proposed share sale is to a new or existing shareholder. Where the proposed share transfer is between existing shareholders, the selling member has already selected the "member to whom" they wish to sell.

[52] Through this analysis the judge concluded that the intention of the company and its shareholders was to have different notice requirements for the two kinds of purchasers, new and existing. She based this determination on the language of Article 4.1, which does not contain a notice requirement for the right of second refusal and grants the selling shareholder the right to choose the "member" purchaser.

[53] For sales to new shareholders, she inferred that the company had an obligation to give notice to existing shareholders to give them the opportunity to exercise their right of second refusal. That is logical because without notice they would have no ability to exercise that right. However, for a share sale to an existing shareholder, she inferred that the intent was not to require notice to be given to all shareholders because the selection of a "member" purchaser had already been made in accordance with the text in Article 4.1(d). When the selection of a purchaser who is an existing shareholder has been made, there is no need for notice because the seller has already exercised their right of selection.

[54] The judge's reasons for this conclusion are set out in paras. 48 and 49. While her conclusion included consideration of the company practices that developed after Article 4.1(d) came into effect, it was clearly based on the text of the provision. As I have noted, the text does not contain a notice provision extending beyond the company and specifically provides that "the seller may select the member to whom he wishes to sell". She contextualized the stated language in the provision with reference to *Pandher v. Yellow Cab Co. Ltd.*, 2011 BCSC 460, and observed that existing shareholders, other than the shareholder who had entered into the agreement for the proposed transfer, "are by no means guaranteed a right to acquire the shares": Chambers Reasons at para. 48. The court in *Pandher* noted that under the articles, an existing shareholder's ability to exercise their right of second refusal could be impeded either by the company declining to approve the transfer or by the seller's right to select the purchaser: at para. 34.

[55] Finally, the judge also considered the unique nature of the company's business as part of the surrounding circumstances. As I indicated above, I accept that the purpose of Article 4.1 is to ensure preference is given to the company and its existing shareholders when shares are transferred. Its purpose is not to establish the market price for a share. The market price is set by the proposed transaction brought to the board by the seller and intended purchaser.

Conclusion on interpretation

[56] In summary, I would conclude that the judge's interpretation of the provisions of Article 4.1(d) is reasonable and entitled to deference.

[57] In my view, she did not allow the factual matrix to overwhelm the text. Her starting point for the interpretation was the absence of a provision requiring the company to give notice to existing shareholders once the company approved the sale and waived its right of first refusal. She had to determine what was intended by way of a notice requirement in the two different scenarios: 1) where a lack of notice would mean existing shareholders would not have the ability to exercise their right of second refusal for a proposed sale to a new shareholder; and 2) where notice to

existing shareholders for a purchase by an existing shareholder would serve no purpose because the selling shareholder had already "select[ed] the member" who they wished to sell to. The judge appropriately considered the text and examined the factual matrix in light of the purpose of Article 4.1. I would not conclude that she permitted the factual matrix to overwhelm the text of Article 4.1(d).

[58] Similarly, I conclude that the judge did not erroneously ignore provisions in the Articles. She considered the requirement that a shareholder's right of second refusal must be exercised within 10 days after the company has declined to exercise its right of first refusal. However, she determined Article 4.1 does not require the company to give notice of a proposed share sale or put the share transfer on hold for 10 days where the selling shareholder has already selected the "member" purchaser. This is because she found that the right of second refusal, and potential arguments for notice linked to it, are impeded in such a scenario: Chambers Reasons at para. 48, citing *Pandher* at para. 34. That conclusion is reasonable. Further, her interpretation does not damage the intent of Article 4.1(d).

[59] Finally, when applying the standard of review in contractual interpretation, it is necessary to distinguish between disagreement about how the decision maker interpreted words of the contract in light of the factual matrix, and disagreement about whether the decision maker applied the proper principles: *Teal Cedar* at para. 65. In my view, the judge applied the proper principles. The appellants' complaint is with how she interpreted the words of Article 4.1 having regard to the factual matrix.

Disposition

[60] I would dismiss the appeal.

"The Honourable Mr. Justice Butler"

I AGREE:

"The Honourable Madam Justice DeWitt-Van Oosten"

I AGREE:

"The Honourable Justice Warren"